

### REMARKS

Claims 1-53 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the restriction requirements in view of the remarks contained herein.

### ELECTION REQUIREMENT

The Office Action requires an election between the following three groups of claims:

- I. Claims 1-16, 51 and 52, drawn to a method for calibrating an electromagnetic navigation system, classified in class 600, subclass 424.
- II. Claims 17-26 and 53, drawn to a method for navigating an instrument in an electromagnetic navigation system, classified in class 600, subclass 424.
- III. Claims 27-50, drawn to an electromagnetic navigation system, classified in class 600, subclass, 424.

Applicants respectfully traverse the election requirement and request reconsideration and withdrawal of the restriction requirement. Applicants make this request because the Applicants submit that the Examiner has not established a prima facie showing that the claimed inventions are independent and/or that there is a serious burden on the Examiner. The Examiner can only show the claimed inventions are independent by providing an appropriate explanation of separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. Such a showing has not been made by simply indicating that various groups of claims can be found in different classifications. Different classifications can be included in a single

field of search and can have the same status in the art. In this instance, however, the three groups are classified in the very same class and sub-class.

Further, this restriction requirement was made after a search and substantive action of each of the pending claims has already been made. Thus, maintaining each of the claims in the present application would not be a serious burden. Though the claims were previously amended, they were amended merely to clarify the elements of the claims as filed. Therefore, the scope of the claims has not changed since the claims were filed in the application. Again, Applicants submit that it is not a serious burden to maintain each of the claims in the present application.

#### PETITION DIRECTOR

If the restriction requirement is maintained and made final, Applicants preserve, through the traversal of the restriction by Applicants, the right to petition the Director to review the requirement now or may defer the petition until after final action or allowance of claims to the invention elected (37 C.F.R. § 1.144).

In view of the above, Applicants respectfully request reconsideration or modification of the requirement of Restriction election.

#### ELECTION WITH TRAVERSE

With traverse, however, Applicants elect, for Examination the claims of Group III (Claims 27-50). Applicants do, however, reserve the right to file any unelected claims in later filed divisional patent applications. Applicants also submit that the claims of Group III should be allowable in light of the prior Office Action dated October 31, 2006.

CONCLUSION

It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this response is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: July 3, 2007

By: 

Richard W. Warner, Reg. No. 38,043

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600